

The Appeals Board finds, for preliminary hearing purposes, that the Order of the Administrative Law Judge should be affirmed.

Claimant alleges she injured her back on March 10, 1998, when, while exiting a pickup truck, she slipped on ice and injured her back. It is acknowledged claimant had a preexisting back condition for which she was receiving chiropractic care through Dr. James M. Vander Yacht. Claimant's testimony is, for the most part, uncontradicted regarding how the accident occurred as there were no witnesses. In addition, Lonnie Huff, an ex-supervisor of respondent, acknowledged claimant came into the office on the date of accident and told him of the incident. Rather than filling out an accident report, Mr. Huff advised claimant to talk to her then supervisor, Allen Meier.

Mr. Meier denies being advised of an accidental injury by claimant. He also does not recall claimant asking for any paperwork to fill out on this alleged accident.

Mr. Meier does acknowledge receiving a phone call from claimant on a Monday or a Tuesday advising him that she had injured herself at home and would not be coming to work. He filled out an absentee slip and turned it in to respondent's human resources department. That is the only conversation he recalls having with claimant regarding a back injury.

Respondent also provided the testimony of Darrell Deneault, the S2 assembly department manager and Mr. Meier's supervisor. Mr. Deneault denied any knowledge of claimant reporting an accidental injury to him, to Mr. Huff or to Mr. Meier.

Respondent also provided the testimony of Steve Rothenberger, the assembly manager for respondent. Mr. Rothenberger and Debra Mohler, the benefits administrator and past workers' compensation claim administrator for respondent, testified about the appropriate procedures to be followed in the event of an accident. No documented claim for compensation was provided to respondent until May 1998. However, the issue before the Board is not of written claim, as that has been stipulated to by the parties. The issue is one of notice. K.S.A. 44-520 obligates a claimant to provide notice of an accident to respondent within ten days after the date of the accident. K.S.A. 44-520 states in part "except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

In this instance, the evidence supports claimant's contention that she discussed the fall with Mr. Huff. While Mr. Huff was not her immediate supervisor, he was a supervisor for respondent and, therefore, authorized to accept notice of this accident. The Board acknowledges that a dispute exists between respondent and Mr. Huff, who was laid off in May 1998 after 17 years of employment. However, there is not sufficient evidence in the record to discount Mr. Huff's testimony, even when considering the potential ill will which might exist between Mr. Huff and the respondent. Notice to Mr. Huff would be sufficient to satisfy the statutory notice requirements of K.S.A. 44-520.

Finally, a medical report prepared by Dr. Vander Yacht's office on March 16, 1998, supports claimant's version of the accidental injury. In that report, which is only six days after the accident, claimant advised Dr. Vander Yacht's office that she fell last Tuesday. The Tuesday prior to March 16, 1998, would be March 10, 1998, claimant's alleged date of accident. Dr. Vander Yacht, in his January 6, 1999, letter, stated that claimant's fall of March 10, 1998, exacerbated her preexisting back problem.

The Appeals Board, therefore, finds, for preliminary hearing purposes, that claimant has satisfied the notice requirements of K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated February 15, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Patrik W. Neustrom, Salina, KS
Kurt W. Ratzlaff, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director